

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS
3 MDL NO. 1456
4 CA NO. 01-12257-PBS

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IN RE:
AVERAGE WHOLESALE PRICE
PHARMACEUTICAL LITIGATION

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10 BEFORE: The Honorable Patti B. Saris

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12 STATUS CONFERENCE

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15 John Joseph Moakley United States Courthouse
16 Courthouse No. 13
17 One Courthouse Way
18 Boston, MA 02210
19 Monday, March 8, 2004
20 3:07 P.M.

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22 Cheryl Dahlstrom
23 Official Court Reporter
24 United States District Court
25 595 Main Street, Room 514
 Worcester, MA 01608-2076
 Mechanical Steno - Transcript by Computer

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1 say it's seven, eight, nine months down the road before we get
2 to resolution points, which is probably realistic.

3 Then these other companies have basically sat around
4 for two or three years waiting. We get to resolution points,
5 and then we're going to be in a situation, most likely with
6 respect to those companies, where they're going to say, hey,
7 you haven't seen my stuff. I'm not like those other
8 companies. Then we start all over.

9 THE COURT: That may be, but the truth is --

10 MR. BERMAN: There were two, three years.

11 THE COURT: You're more experienced than I am. I
12 have never had a case of this magnitude. I would imagine it's
13 one of the largest cases most people in this room have dealt
14 with. We've got to come up with a way of having a trial
15 balloon.

16 I don't think a few drugs here -- taking every
17 company across the board is going to do that because, for one
18 thing, it won't work for class certification. I won't be able
19 to decide the juridical linkage issue. I think there's good
20 case law for you for it. I've got to decide whether they're
21 typical. I won't be able to certify a class involving every
22 drug in a company. It will postpone almost indefinitely the
23 class certification issue.

24 MR. BERMAN: We're asking you in our proposal to
25 certify just a few drugs for each company. I don't think it's

1 might be a better way to go.

2 MR. SOBOL: In this situation, we have to all be
3 flexible. I just want you to be mindful --

4 THE COURT: It would be better --

5 MR. SOBOL: -- the population of people who have been
6 affected by the high price of drugs that relates to AWP is an
7 issue that has been looked at time and time again.

8 THE COURT: Has anyone done multiple defendant
9 classes?

10 MR. SOBOL: No. This is the only multiple defendant.

11 THE COURT: I am thinking of going defendant by
12 defendant mostly because I'm finding how complex this is. My
13 guess is each defendant does it a little differently. You
14 need to think about it that way, both in terms of relief and
15 in terms of manageability and typicality and all that kind of
16 thing.

17 You can persuade me contrary, I suppose, but my
18 initial instinct is I'm going to have to do it that way.
19 That's why I was thinking in terms of resolving some
20 companies.

21 How many would you think would make sense if we did,
22 you know, some companies sort of on a fast track and the
23 others -- you know, we have so many lawyers involved. I can't
24 believe we can't do the others on a slower track.

25 MR. BERMAN: We've been talking while --

1 C E R T I F I C A T E

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4 I, Cheryl Dahlstrom, Official Reporter of the United
5 States District Court, do hereby certify that the foregoing
6 transcript, from Page 1 to Page 54, constitutes, to the best
7 of my skill and ability, a true and accurate transcription of
8 my stenotype notes taken in the matter of In Re Average
9 Wholesale Price Pharmaceutical Litigation.

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